



[Docket No. FR-7050-N- 14]

30-Day Notice of Proposed Information Collection: Comment Request; Implementation of the Housing for Older Persons Act of 1995 (HOPA), OMB Control No: 2529-0046

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments Due Date: **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_submission@omb.eop.gov or

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting

"Currently under 30-day Review - Open for Public Comments" or by using the search function.

Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW,

Washington, DC 20410; e-mail Colette Pollard at Colette.Pollard@hud.gov or telephone 202-

402-3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 15, 2021 at 86 FR 37340.

A. Overview of Information Collection

Title of Information Collection: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

OMB Control Number: 2529-0046.

Type of Request: Proposed reinstatement without change of an expired, previously approved information collection requirement.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C. 3601 et seq.], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under §3607(b)(2) of the Act, Congress exempted three (3) categories of “*housing for older persons*” from liability for familial status discrimination: (1) housing provided under any State or Federal program which the Secretary of HUD determines is “*specifically designed and operated to assist elderly persons (as defined in the State or Federal program)*”; (2) housing “*intended for, and solely occupied by persons 62 years of age or older*”; and (3) housing “*intended and operated for occupancy by at least one person 55 years of age or older per unit* [‘55 or older’ housing].” In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Public Law 104-76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the “55 or older” housing exemption provided under §3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer “*significant facilities and services specifically designed to meet the physical or social needs of older persons.*” In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *at least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age or older; (2) the housing provider must publish and adhere to

policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with “*rules issued by the Secretary for verification of occupancy, which shall..... provide for [age] verification by reliable surveys and affidavits.*”

The HOPA did not significantly increase the record-keeping burden for the “55 or older” housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, during a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the “55 or older” housing exemption as of the date on which the alleged Fair Housing Act violation occurred.

The HOPA information collection requirements are necessary to establish a housing provider’s eligibility to claim the “55 or older” housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA’s requirement that a housing provider must demonstrate the intent to operate a “55 or older” housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a “55 or older” housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA’s “80 percent occupancy” requirement and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions and should require minimal preparation time. Further, a senior housing provider’s operating rules, policies and procedures are not privileged or confidential in nature,

because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units that are actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the “55 or older” housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD’s Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the “55 or older” housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:

Housing providers claiming eligibility for the HOPA’s “55 or older” housing exemption must demonstrate ongoing compliance with the HOPA exemption requirements. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a

means of certifying that their housing communities or facilities qualify for the exemption.

Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours [See Table below].

Type of Collection Activity	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost Per Response	Annual Cost
One: Collect reliable age verification records for at least one occupant per dwelling unit to meet the HOPA's minimum "80% occupancy" requirement	1,000	1	1,000	1	1,000	\$18.18	\$18.18
Two: Publication of & adherence to policies &	1,000	1	1,000	2	2,00	\$18.18	\$36,360

procedures that demonstrate intent to operate “55 or older” housing							
Three: Periodic updates of age verification records	1,000	1	1,000	2.50	2,500	\$18.18	\$45,450

B. Solicitation of Public Comments

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD’s program functions;
- (2) Evaluate the accuracy of HUD’s assessment of the paperwork burden that may result from the proposed information collection;
- (3) Enhance the quality, utility, and clarity of the information which must be collected; and
- (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).
- (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology

HUD encourages interested parties to submit comment in response to these questions.

AUTHORITY: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Colette Pollard,
*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[Billing Code: 4210-67]

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